IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 333 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H.R.MALKANI EX.DIRECTOR OF EMPLOYMENT

Versus

CHIEF SECRETARY TO GOVERNMENT

Appearance:

1. Special Civil Application No. 333 of 1992

MR DP VORA for Petitioner

MR UR BHATT, AGP for Respondent No. 1-2

RULE SERVED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 23/04/2004

ORAL JUDGEMENT

1. The petitioner challenges the amendment made in the terms and conditions of his deputation by the

corrigendum dated 17-4-1989, at Annexure "A" to the petition, by which the original terms and conditions at Srl. Nos. 4 and 5 of the orders sending him on deputation on foreign service (Vocational Rehabilitation of the Disabled in Swaziland under the I.L.O.) with effect from 16-6-1979 (appended with the government resolution dated 23-6-1982) were substituted.

2. The original terms and conditions at Srl. Nos.4 and 5 read as under :

"Terms & Conditions of deputation of Shri H.R. Malkani to the post of Expert in Vocational Rehabilitation of the Disabled in Swaziland :

(1) xxxxx
(2) xxxxx
(3) xxxxx

(4) During the period of deputation, he will continue to be governed by the leave, pension and provident fund rule of the State Government as applicable to him from time to time.

(5) Leave and pension contribution will be paid of the I.L.O. Government of India to the State Government in accordance with the provision of the B.C.S.R. and in consultation with the Accountant General, Gujarat, Ahmedabad."

(6) xxxxx "

3. The above original terms and conditions, which were appended with the government resolution dated 26-3-1982, were substituted by the impugned corrigendum dated 17-4-1989, by the following terms and conditions :

"4. During the period of deputation, he will continue to be governed by the leave, pension and provident fund or any other fund under the rules of foreign employer. The leave salary in respect of any leave granted by the foreign employer will be paid be paid by them and the leave will not be debited to his leave account in the State Government or the Government of India. The period of foreign service will not count towards his leave under the State Government / Government

of India. Likewise, pension and pensionary benefits and repayment of the contributions made by him towards the provident fund or any other funds under the rules of foreign employer during the period of deputation shall be made by the foreign employer.

5. The services rendered during the period of deputation to the foreign employment by him will not be reckoned as the qualifying services for the purpose of pension and pensionary benefits under the State Government / Government of India. In short, during the period of deputation on foreign services, the payment of pension contribution will be made to the State Government / Government of India by or on behalf of the officer. The portion will not count for purpose of calculation of pension under the State Government / Government of India and the officer will be eligible for the benefits due to him from the foreign employer concerned under their rule for the period under question. In case the officer does not rejoin the State Government but retire from the Government service while serving with the foreign employer, his pension under the government will be calculated on the basis of the services rendered by him under the State Government."

4. There is no dispute about the fact that the petitioner was sent on deputation to the International Labour Organization from 16-6-1979 and his deputation was extended from time to time till he retired on superannuation on 30-9-1984. The aforesaid terms and conditions No. 4 and 5 of the original terms and conditions of his deputation, which were appended with the government resolution dated 23-6-1982, continued to operate even after the retirement of the petitioner. Admittedly, no hearing was given to the petitioner before substituting these terms and conditions. It is not shown that the terms and conditions, which were originally agreed, contravened any statutory rules or regulation. The alteration in the original terms and conditions was clearly detrimental to the petitioner so far as the fixation of his pension was concerned, because, under the original terms and conditions, the period for which he was on deputation was to be computed for fixing his pension, while under the amended conditions, only the period during which he had rendered services under the

State Government was to be computed for fixing the pension.

5. It is obvious that the petitioner had proceeded on deputation to foreign service on the basis of the terms and conditions of deputation which were fixed as reflected in the appendix to the government resolution dated 26-3-1982. The petitioner continued to remain on deputation on the same terms and conditions and even after his retirement, the terms and conditions were not altered till 17-4-1989, when, suddenly they were changed by a corrigendum without hearing the petitioner. Under the terms and conditions on which he served on deputation, the petitioner was governed by the Leave, Pension and Provident Fund Rules of the State Government, as applicable to him from time to time. Such conditions could not have been changed to the disadvantage of the petitioner after his retirement, by the impugned circular dated 17-4-1989.

6. The terms and conditions on which the petitioner was deputed were binding on the State Government also and in absence of violation of any statutory provision, it was not open for the State Government to rescind those terms and conditions on the basis of which the petitioner had proceeded on deputation and had served till he superannuated. Therefore, the impugned circular is arbitrary and issued in violation of principles of natural justice and cannot be sustained. The impugned corrigendum dated 17-4-1989, at Annexure "A" to the petition, is, therefore, hereby set aside as illegal and unconstitutional, with a direction on the respondents to fix the pensionary and other benefits of the petitioner on the basis of the unamended terms and conditions of his deputation. Such fixation of pension and other benefits, as may be now payable to the petitioner, will be paid to him within three months from the date of the receipt of the writ of this order by the concerned respondents. Rules is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

parmar*